

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PYROLYX USA INDIANA, LLC, et al.,

Plaintiffs,

-against-

ZEPPELIN SYSTEMS GMBH, et al.,

Defendants.

Civil Action No. 1:20-cv-05436

USDC SDNY
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**JOINT MOTION TO CONSOLIDATE
CIVIL ACTION NO. 1:20-CV-05436 AND CIVIL ACTION NO. 1:19-CV-11222**

Pursuant to Federal Rule of Civil Procedure 42, Plaintiffs Pyrolyx USA Indiana, LLC, Pyrolyx Indiana, Inc., and Pyrolyx AG (collectively, "Plaintiffs") and Defendants Zeppelin Systems USA, Inc. and Zeppelin Systems GmbH (collectively, "Defendants") file this Joint Motion to Consolidate Civil Action No. 1:20-CV-05436 and Civil Action No. 1:19-CV-11222, and respectfully show as follows:

PROCEDURAL AND FACTUAL BACKGROUND

This dispute stems from the construction of a tire recycling and carbon black facility in Terre Haute, Indiana. Plaintiffs own the facility and Defendants supplied equipment and services to the facility.

On December 6, 2019, Defendant Zeppelin Systems USA, Inc. filed two lawsuits against Plaintiff Pyrolyx USA Indiana, LLC. The first was a lien enforcement action in Vigo County Superior Court in Terre Haute, Indiana ("Lien Enforcement Action"). The Lien Enforcement Action is subject to an agreed stay and is currently in a holding pattern. The second lawsuit alleges

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breach of contract and tort causes of action and is also pending in this Court as Civil Action No. 1:19-cv-11222 (“SDNY Lawsuit”).

On February 19, 2020, Plaintiffs filed suit in the Vigo County Superior Court also alleging breach of contract and various torts against Defendants. Defendants removed that action to the United States District Court for the Southern District of Indiana. ECF Nos. 1, 17, 18. Defendants thereafter sought a transfer of the lawsuit from the Southern District of Indiana to this Court, which was granted on July 14, 2020. ECF Nos. 62, 63, 64.

Because this lawsuit and the first-filed SDNY Lawsuit arise from the same operative facts, involve many overlapping parties, and concern the same questions of fact and law, the parties hereby move to consolidate and merge the cases.

ARGUMENTS AND AUTHORITIES

Under Federal Rule of Civil Procedure 42, courts may consolidate cases “involv[ing] a common question of law or fact.” Fed. R. Civ. P. 42(a); *see In re Fuwei Films Sec. Litig.*, 247 F.R.D. 432, 435 (S.D.N.Y. 2008). “The trial court has broad discretion to determine whether consolidation is appropriate.” *Johnson v. Celotex Corp.*, 899 F.2d 1281, 1284-85 (2d Cir. 1990).

Here, this lawsuit and the SDNY Lawsuit are nearly identical and raise substantially similar questions of law and fact. For the purposes of judicial economy and to avoid unnecessary costs and delay, this Court should consolidate the two actions for all purposes under Rule 42(a).

The parties also respectfully request that once consolidated, the case management plan entered in the first-filed SDNY Lawsuit apply with equal force and govern the deadlines and procedures in this action as well.

CONCLUSION

For the above-stated reasons, Plaintiffs and Defendants hereby request this matter be consolidated and merged with Cause No. 1:19-cv-11222.

Dated: July 18, 2020

Respectfully Submitted,

By: /s/ Kip Brar
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CERTIFICATE OF CONFERENCE

The undersigned counsel for Defendants hereby certifies that he conferred with Jason Richey, counsel for Plaintiffs, via telephone on July 15, 2020 and via email on July 16 and 17, 2020, and Plaintiffs are in agreement with the relief sought herein and join in this motion.

Kip Brar
Kip Brar

CERTIFICATE OF SERVICE

The undersigned counsel for Defendants hereby certifies that a copy of the foregoing was filed electronically on July 18, 2020. Notice of this filing will be sent to the following by operation of the Court's electronic filing system and the parties may access this filing through the Court's system:

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